

## REMARKS

### Discussion of Claim Amendments

Applicant has amended Claim 1, cancelled Claims 2-20, and added new Claims 21-31, and 10. The new claim set puts the claims into the state the method claims were in after an Article 34 amendment made during international prosecution. Claim 1 is amended with this paper (rather than cancelled) to illustrate the changes between originally filed Claim 1 in the PCT application, and Article 34 amended Claim 1. Claims 21-31 above correspond to Claims 2-12 of the Article 34 amended claims.

The applicants have noted that upon National Phase entry, the original claim set was stamped "ART 34 AMDT" by mistake. The applicant wishes now to have the Article 34 amended claim set examined. In view of the fact that the Article 34 amendments were not entered in the case originally, it is respectfully requested that an additional Office Action, if one is found necessary by the Examiner, be a non-final action.

### Discussion of Claim Objections

The Examiner has objected to Claims 1 and 9 because of certain informalities. In reply, Applicant has amended Claim 1 and cancelled Claim 9. It is believed the revised claims do not suffer the deficiencies noted by the Examiner. Thus, Applicant respectfully requests withdrawal of the objections to Claims 1 and 9.

### Discussion of Claim Rejections

The Examiner has rejected independent Claim 1 under 35 U.S.C. § 102(b) as being anticipated by International Patent Application Publication No. WO 99/06526 ("Klingner" hereinafter). In view of the foregoing claim amendments, and for the reasons as set forth below, Applicant traverses the Examiner's rejections and requests that the claims be reconsidered and allowed.

Amended independent Claim 1 generally recites a method of recovering juice and/or wine from marc. As an initial matter, applicants note that the production of red or white wine is very

different from the production of other types of food and drink products. Thus, prior art processes involving the production of sugar or extraction of components from fruit are not relevant to the processes being claimed. There are legislative requirements regarding the addition of water and the mixing of batches that need to be considered, as well as the over-riding consideration that any recovered juice or wine not adversely affect the flavor of the final product.

Turning now to the claims, Claim 1 as amended requires "recycling at least a portion of the permeate as extraction liquid." This limitation was in previously examined Claim 2. The Examiner acknowledged that this recycling is not disclosed in Kligner, but maintained that Kligner teaches that the water should be from a grape source, and it would thus be obvious to recycle the water because all the elements were known, and could be combined with no change in their functions to yield predictable results. However, the Examiner's rejection does not combine the elements with no change in their functions. When the water is recycled rather than wasted, this is a completely different function for the water, one with both environmental and cost benefits not hinted at in Kligner. The overall yield of wine is significantly increased. The Examiner is using hindsight to reconstruct the invention by characterizing the recycling step as involving no change in function.

Furthermore, Claim 1 also now requires "fractionating said liquid portion using reverse osmosis." Kligner mentions reverse osmosis in the Background section. Here, Kligner characterizes reverse osmosis as unsuitable for processing marc. Thus, the Kligner reference teaches away from using reverse osmosis in a marc processing method and cannot be said to suggest including such a step in combination with the other elements of Claim 1.

For at least these reasons, it is respectfully submitted that Claim 1 is patentable over Kligner. The remaining claims are dependent on Claim 1, and it is respectfully submitted that these claims are patentable for at least the same reasons.

In addition, the applicant has some comments regarding new Claim 25. This claim requires "micro-filtering the liquid portion using a cross-flow filter." In addition to teaching away from reverse osmosis, Kligner teaches away from using membranes, especially when membranes are used in connection with reverse osmosis devices. Using the cross-flow filter helps avoid certain technical problems associated with the build-up of particulate matter on filter

Appl. No. : 10/537,222  
Filed : January 9, 2006

membranes by high tangential flow of the liquid portion across the surface of the filter membranes. Nowhere in Klingner does it disclose or teach a cross-flow filter, let alone that the cross-flow filter is positioned ahead of a reverse osmosis device so as to micro-filter a liquid portion.

Additionally, Applicant respectfully submits that Siemann also fails to disclose or teach all the limitations of amended independent Claim 1. Therefore, the claims are allowable over Klingner and Siemann, either alone or in combination.

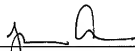
#### CONCLUSION

In view of Applicant's foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. Should the Examiner have any remaining concerns which might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 6/9/09

By:   
Thomas R. Arno  
Registration No. 40,490  
Attorney of Record  
Customer No. 20,995  
(619) 235-8550